

Reporting Disciplinary Actions, Impairment and Misconduct of Certain Health Care Practitioners Pursuant to House Bill No. 1441 (2003 Session)

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Objective of HB 1441 (2003)

- *To enhance DHP's ability to perform prompt, efficient, and effective investigations,*
 - *aided by timely and meaningful information,*
 - *from sources most likely to have knowledge of the practitioner's conduct and ability.*

Means Chosen by General Assembly to Accomplish the Objective

- Articulation of circumstances under which hospital officials and others must report to DHP
- Establishment of timetable for required reports
- Requirement to provide specific information calculated to help DHP focus its investigation
- Imposition of enhanced penalties for noncompliance with reporting requirements

Reporting Laws

- Va. Code § 54.1-2906
- Va. Code § 54.1-2907
- Va. Code § 54.1-2908
- Va. Code § 54.1-2909

Reporting Laws

Va. Code § 54.1-2906

- **Hospitals and other health care institutions** to report:
 - impairment,
 - misconduct,
 - disciplinary action, and
 - resignation while under investigation*of any person licensed by a health regulatory board.*

- **State Health Commissioner** to report
 - information of which VDH may become aware indicating misconduct*by any person licensed by a health regulatory board.*

Persons *Licensed* by Health Regulatory Boards

- Audiology/Speech/Language Pathology:
 - ***Audiologists***
 - ***Speech Pathologists***
- Counseling
 - ***Marriage and Family Therapists***
 - ***Professional counselors***
 - ***Licensed Substance Abuse Treatment Practitioners***
- Dentistry:
 - ***Dentists***
 - ***Oral and Maxillofacial Surgeons***
 - ***Dental Hygienists***

Persons *Licensed* by Health Regulatory Boards (cont.)

➤ Medicine:

- *Doctors of Medicine, including interns and residents*
- *Doctors of Osteopathic Medicine*
- *Chiropractors*
- *Nurse Practitioners*
- *Podiatrists*
- *Physician Assistants*
- *Radiologic Technologists*
- *Radiologic Technologists, Limited*
- *Respiratory Care Providers*
- *Occupational Therapists*
- *Acupuncturists*

Persons *Licensed* by Health Regulatory Boards (cont.)

- Nursing:
 - ***Registered Nurses***
 - ***Licensed Practical Nurses***
 - ***Nurse Practitioners***
 - ***Clinical Nurse Specialists***
- Nursing Home Administrators:
 - ***Nursing Home Administrators***
- Optometry:
 - ***Optometrists***
- Pharmacy:
 - ***Pharmacists***
- Physical Therapy:
 - ***Physical Therapists***
 - ***Physical Therapist Assistants***

Persons *Licensed* by Health Regulatory Boards (*cont.*)

- Psychology:
 - ***Applied Psychologists***
 - ***Clinical Psychologists***
 - ***School Psychologists***
- Social Work:
 - ***Clinical Social Workers***
 - ***Social Workers***

Licensees of the Board of Funeral Directors and Embalmers and the Board of Veterinary Medicine should be reported under the subsection of § 54.1-2906 requiring report if in need of treatment for or admitted for treatment of substance abuse or psychiatric illness.

Reporting Laws (cont.)

Va. Code § 54.1-2907

(Not amended by HB 1441)

- **Every practitioner licensed or certified by a health regulatory board, who treats professionally any other person licensed or certified by a health regulatory board, to report, except as prohibited by federal law, when such health professional is treated for**
- **a mental disorder,**
 - **chemical dependency or**
 - **alcoholism**
- unless the treating practitioner determines there is a reasonable probability that the professional being treated is competent to continue practice or would not constitute a danger to himself, his patients, or the public.*

Persons *Certified* by Health Regulatory Boards

Athletic trainers

Massage Therapists

Certified Nurse Aides

Certified Rehabilitation Providers

Certified Sex Offender Treatment Providers

Certified Substance Abuse Treatment Providers

Reporting Laws (cont.)

Va. Code § 54.1-2908

- The **presidents of professional organizations** to report **disciplinary action** *taken against any member licensed by the BOM* resulting from:
- intentional or negligent conduct that causes or is likely to cause injury to a patient,
 - breach of professional ethics,
 - incompetence,
 - moral turpitude,
 - drug addiction, or
 - alcohol abuse

Reporting Laws (cont.)

Va. Code § 54.1-2909

➤ **Persons licensed by the BOM, presidents of professional organizations, state-licensed health care institutions, malpractice carriers, and HMOs** to report, *with regard to persons licensed by the BOM:*

- disciplinary actions,
- malpractice judgments,
- voluntary surrenders of license,
- settlements of malpractice claims, and
- any other evidence indicating that such person
 - may be professionally incompetent,
 - has engaged in misconduct that causes or is likely to cause injury,
 - has engaged in unprofessional conduct, or
 - may be mentally or physically unable to practice safely.

Persons *Licensed* by the Board of Medicine

- *Doctors of Medicine, including interns and residents*
- *Doctors of Osteopathic Medicine*
- *Chiropractors*
- *Nurse Practitioners*
- *Podiatrists*
- *Physician Assistants*
- *Radiologic Technologists*
- *Radiologic Technologists, Limited*
- *Respiratory Care Providers*
- *Occupational Therapists*
- *Acupuncturists*

A closer look at ...

***Va. Code § 54.1-2906
as amended by HB 1441***

A closer look. . . Va. Code § 54.1-2906

➤ Who reports:

CEO and Chief of Staff of every hospital or other health care institution in the Commonwealth.

“Health care institution” includes:

- *general hospitals,*
- *outpatient surgical hospitals,*
- *nursing homes and certified nursing facilities,*
- *licensed mental or psychiatric hospitals, and*
- *hospitals operated by UVa and VCU.*

➤ Who is reported:

Any person licensed by a health regulatory board

State Health Commissioner

A closer look. . . Va. Code § 54.1-2906

➤ What is reported / when:

- **When a CEO/COS becomes aware *in his official capacity*:**
 - that a **licensed practitioner** is in need of treatment for or has been admitted or committed to treatment for substance abuse or psychiatric illness which may render practitioner a danger to himself or others.
 - Report admission or commitment *within 5 days*.
 - Report other circumstances *within 30 days*.
 - that a **reasonable probability** exists that a **licensed practitioner** engaged in **unethical, fraudulent or unprofessional conduct**.
 - Report *within 30 days* of determining reasonable probability exists.

A closer look. . . Va. Code § 54.1-2906

“In his official capacity” = when information is imparted to or received by the CEO/COS while engaged in official duties or by virtue of his position.

“Reasonable Probability” = a likelihood greater than a mere possibility.

To determine “reasonable probability,” a CEO/COS may undertake reasonable investigation or consultation, as needed, with internal boards or committees. If information received is of sufficient credibility and is sufficiently complete, no investigation by CEO/COS may be needed.

“Unethical, fraudulent or unprofessional conduct” – as defined by the laws and regulations governing the profession.

A closer look. . . Va. Code § 54.1-2906 (cont.)

- What is reported / when (cont.)
 - Any **disciplinary action** taken or begun against a licensed practitioner as a result of intentional or negligent conduct that causes or is likely to cause injury, a breach of professional ethics, professional incompetence, moral turpitude, or substance abuse.
 - Report **within 30 days** of notifying practitioner in writing of disciplinary action.
 - Any **voluntary resignation, restriction, or expiration of privileges of any health professional while under investigation or subject to disciplinary proceedings** related to possible intentional or negligent conduct that causes or is likely to cause injury, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.
 - Report **within 30 days**.

A closer look. . . Va. Code § 54.1-2906 (cont.)

➤ To whom / Content / Penalty:

Report in writing to Director of DHP. Include:

- Name and address of subject
- Full description of the circumstances
- Names and contact information of persons with knowledge of the facts
- Names and contact information of persons from whom the institution sought information
- All relevant medical records if patient care or practitioner health is at issue.

Give professional who is the subject of the report to DHP an opportunity to review the report. Practitioner may submit a separate report.

A closer look. . . Va. Code § 54.1-2906 (cont.)

If report is sent to National Practitioner Data Bank, provide notice of such to relevant board.

No requirement to submit any proceedings, minutes, records, or reports that are privileged under peer review statute (§ 8.01-581.17), except that there is **no bar to making the required report or to submitting medical records that are necessary to investigate professional conduct.**

No obligation to report if CEO/COS has actual knowledge that matter has been reported.

Certain records and information in connection with treatment for drug or alcohol abuse are subject to confidentiality under federal law and are exempt from these reporting requirements.

A closer look. . . Va. Code § 54.1-2906 (cont.)

Persons making report or providing information in good faith shall be immune from civil liability.

A civil penalty up to \$ 25,000 may be assessed by Director of DHP for a failure to report. Loss of Medicare / Medicaid certification and denial of issuance or renewal of licensure until penalty is paid.

A closer look at ...

***Va. Code § 54.1-2908
as amended by HB 1441***

A closer look. . . Va. Code § 54.1-2908

➤ Who reports:

Presidents of:

Medical Society of Va

Osteopathic Medical Assn

Va Chiropractors Assn

Va Podiatric Medical Assn

- **Presidents of any association, society, academy, or organization whose members are licensed by the Board of Medicine**

➤ Who is reported:

Any member of respective organization who is licensed by the Board of Medicine.

A closer look. . . Va. Code § 54.1-2908

➤ What is reported / when:

- **Presidents of named organizations** to report *any disciplinary action taken by the organization* against a **member licensed by the BOM** as result of intentional or negligent conduct that causes or is likely to cause injury to a patient, professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.
- **Presidents of any organization, society, etc.** to report *any disciplinary action taken* against a **member licensed by the BOM** as result of intentional or negligent conduct that causes or is likely to cause injury to a patient, professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

Reports are to be made within 30 days.

A closer look. . . Va. Code § 54.1-2908

➤ To Whom / Content / Penalty:

Report in writing to the Board of Medicine. Include:

- Name and address of subject of the report
- Full description of the circumstances surrounding facts required to be reported
- Names and contact information of persons with knowledge of the facts reported
- Names and contact information of persons from whom the organization sought information to substantiate the facts
- All relevant medical records if patient care or practitioner health is at issue

Give professional who is the subject of the report to DHP an opportunity to review the report. Practitioner may submit a separate report.

If report has been sent to National Practitioner Data Bank, provide notice of such to relevant board.

A closer look. . . Va. Code § 54.1-2908

No person obligated to report as required if such person has actual knowledge that matter has been reported to the BOM.

If one of the named organizations receives complaint against a member, the organization, in lieu of disciplinary action, may request that the BOM investigate. Immunity from civil liability for such report in good faith.

Person making report or providing information in good faith shall be immune from civil liability.

Any person who fails to make report as required shall be subject to civil penalty not to exceed \$5,000. Denial of issuance or renewal of licensure until penalty is paid.

A closer look at ...

***Va. Code § 54.1-2909
as amended by HB 1441***

A closer look. . . Va. Code § 54.1-2909

➤ Who reports:

- **Persons licensed by the BOM**
- **Presidents of professional organizations whose members are regulated by the BOM**
- **Health care institutions licensed by the Commonwealth**
- **Malpractice insurance carriers of persons who are subjects of a judgment or settlement**
- **HMOs**

➤ Who is reported:

- **Any person licensed by the BOM:**
 - **Doctors of Medicine, including interns and residents**
 - **Doctors of Osteopathy**
 - **Chiropractors**
 - **Podiatrists**
 - **Physician Assistants**
 - **Radiologic Technologists**
 - **Radiologic Technologists. Limited**
 - **Respiratory care providers**
 - **Occupational Therapists**
 - **Acupuncturists**
 - **Nurse Practitioners**

A closer look. . . Va. Code § 54.1-2909

➤ What is reported / when:

- **Disciplinary action** taken against **person licensed by BOM** (including oneself) **in another state or a federal health institution, or the voluntary surrender of a license in another state while under investigation**
- Any **malpractice judgment or settlement** against such a practitioner
- Any evidence indicating a **reasonable probability that a person licensed by the BOM** is or may be professionally incompetent; **has engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient; has engaged in unprofessional conduct; or may be mentally or physically unable to practice safely**

Reports are to be made within 30 days.

A closer look. . . Va. Code § 54.1-2909

➤ To Whom / Content / Penalty:

Report in writing to the Board of Medicine. Include:

- Name and address of subject of the report
- Full description of the circumstances surrounding facts required to be reported

The reporting requirements **shall be deemed met** with regard to any matter **if reported to the National Practitioner Data Bank and notice** of such report is **provided to the BOM**.

No person is obligated to report as required if person has actual knowledge that matter has been reported to the BOM.

A closer look. . . Va. Code § 54.1-2909

Person making report or providing information in good faith shall be immune from civil liability or criminal prosecution resulting therefrom.

Clerks of state circuit and district courts are also obligated to report to the BOM convictions of known licensees for *any misdemeanor involving a controlled substance, marijuana, substance abuse or moral turpitude* or for *any felony*.

Any person who fails to make report as required shall be subject to civil penalty not to exceed \$5,000. Denial of issuance or renewal of licensure until penalty is paid.

Disciplinary action against any person licensed, registered, or certified by the BOM shall be based upon the underlying conduct of the person and not upon the report of a settlement or judgment submitted under this section.

If in doubt . . .

Contact:

- Executive Director of relevant health regulatory board;
- Enforcement Division of DHP;
- DHP Director, Robert Nebiker;
- DHP Chief Deputy Director, Gail Jaspen; or
- Your personal or your institution's legal counsel.